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ASSISTANT DISTRICT ATTORNEY

October 16, 2013

Scott Clark
Clark and Clark
P.O. Box 389
Ashland, WI 54806

Re: Your letter dated August 22, 2013

Dear Attorney Clark

Earlier today I was provided a copy of correspondence from you to Bad River Tribal Chairman Mike Wiggins, Jr., dated August 22, 2013. The letter appears to relate to the apparent intention of the Bad River Band of Lake Superior Chippewa to hire a professional wetland delineator to perform wetland delineation at various sites in Iron and Ashland Counties. Your letter references these sites as "GTAC property", although I am unaware of any real property actually owned by GTAC in Ashland County. The letter further states "entry onto GTAC property for any other purposes will be deemed trespassing for which GTAC will prosecute under both criminal and civil law."

Respectfully, I take issue with the suggestion that GTAC has the authority to prosecute any violations in Ashland County. I say this first because that is the Constitutional and statutory duty of the Ashland County District Attorney's office, not GTAC. I also say this because it does not appear to me that GTAC has any possessory interest in any real property that would give them standing to raise a claim of any violations of the Managed Forest Law. In fact, as far as I can tell from reviewing land records for Ashland County, GTAC is not a land owner in Ashland County.

Further, I would like to point out that your correspondence suggests the possibility of criminal prosecution for trespass violations of Wisconsin's Managed Forest Law (MFL). My review of the Wisconsin Statutes, and my familiarity with Wisconsin's Criminal Code, leads me to the conclusion that no such criminal violation exists. There is no crime in Wisconsin for "criminal trespass to land". Section 943.13, Wis. Stats., does provide for a civil forfeiture for criminal trespass to land, however, my opinion is that this section is not applicable to MFL violations since §73.83(4)(a), Wis. Stats., contains specific civil (non-criminal) penalties for persons engaged in a violation of unauthorized activities under the Managed Forest Law.

Scott Clark
October 16, 2013
Page two

Finally, while I am certainly no expert on wetlands delineation, I am not convinced that it does not fall within the permitted activities under the Managed Forest Law. I would point out that permitted activities such as hiking and sightseeing implicitly incorporate other related activities under their umbrella. To suggest that an individual could not go hiking or sightseeing on property held in MFL and engage in activities not specifically named in the statute, for example taking photographs or video, is not consistent with my understanding of the purpose of the statute. I would anticipate that there would be other activities that would be permissible under the umbrella of hiking and sightseeing which may include wetlands delineation as I understand it.

Should you have any questions regarding these issues, or should my position regarding GTAC's authority to "prosecute" violations in Ashland County be unclear in any way, please feel free to contact me.

Sincerely,

Kelly J. McKnight
District Attorney
Ashland County, Wisconsin

KJM/bb

cc: Mike Wiggins, Jr.
Bad River Band of Lake Superior
Chippewa Indians
P.O. box 39
Odanah, WI 54861

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